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Not existing at common law, the right of set-off is purely statutory. Loyd, *The Development of Set-off* (1916) 64 U. PA. L. REV. 541. The courts are in considerable confusion, however, as to the extent to which various statutes allow the defendant to set off claims against the assignor of a chose in action in a suit by the assignee. The decisions may be conveniently grouped into three classes. (1) The New York rule is strict in requiring that both claim and set-off must be due and payable at the time of the assignment. The New York statute provides that a claim may be set-off if it existed at the time of the assignment and might have been allowed against the assignor while the contract belonged to him. C. P. A. sec. 267; *Martin v. Kunsmüller* (1867) 37 N. Y. 396; *Michigan Savings Bank v. Miller* (1906, Sup. Ct.) 96 N. Y. Supp. 568; *Harrisburg Trust Co. v. Shufeldt* (1898, C. C. A. 9th) 87 Fed. 669. Thus, under the Michigan statute, which is similarly worded, a creditor cannot set off a mature claim against the assignee of a chose in action which was not due at the time of the assignment. *Bradley v. Thompson Smith's Sons* (1894) 98 Mich. 449, 57 N. W. 576; see *Cosmopolitan Trust Co. v. Rosenbush* (1921, Mass.) 131 N. E. 858. (2) California represents the other extreme. Section 1459 of the Civil Code of California provides that the assignee of a contract takes it "subject to all the defenses existing in favor of the maker at the time of the endorsement," but section 368 of the Code provides that "the action of the assignee is without prejudice to any defense existing at the time of or before notice of the assignment." The latter section is controlling and the Supreme Court has gone so far as to hold that the claim may be set off even if not mature at the date of the notice, so long as it is due at the commencement of the action. *St. Louis Nat. Bank v. Gay* (1894) 101 Calif. 286, 35 Pac. 876; *contra, Stadler v. First Nat. Bank of Helena* (1899) 22 Mont. 190, 56 Pac. 111 (holding the first section controls and applying the New York rule). (3) Many statutes (e. g., Nev. Civil Pract. Act, sec. 46, Rev. Laws, 1912, sec. 4988) contain only the latter section of the California statute and this is interpreted, quite logically, to mean that the defendant may set off any claim which had matured before notice of the assignment. *Hibernian Banking Assoc. v. City of Chicago* (1913) 178 Ill. App. 138; *First Nat. Bank v. Nye County* (1914) 38 Nev. 123, 145 Pac. 932. The instant case is another illustration of this. As a matter of abstract justice, it seems fair to extend the doctrine even as far as the California view. The mere notice of the assignment ought not to destroy any right which the defendant has acquired against the assignor prior to the notice, even though that right is not immediately enforceable at that time. This has been recognized by courts of equity when a debtor is allowed to set off unmatured claims against the assignee of an insolvent creditor. See Clark, *Set-off in Cases of Immature Claims in Insolvency and Receivership* (1920) 34 HARV. L. REV. 178.

**SPECIFIC PERFORMANCE OF CONTRACTS CONTAINING A PROVISION TO ARBITRATE.**—A contract between A and B gave A the right to dig a tunnel. The plans for the tunnel were to be submitted to B for his approval. In case of disagreement an umpire was to be called, and if the parties could not agree upon an umpire, one X was to act as umpire. A submitted plans to B who refused to co-operate and threatened to obstruct construction. A thereupon submitted the plans to X, who approved of them, and then A filed a bill asking that B be enjoined from obstructing the construction. *Held*, that the agreement to arbitrate was subsidiary and incidental and that the injunction be granted, since the remedy at law was inadequate. *Hydraulic Power Co. v. Pettebone-Cataract Paper Co.* (1921, App. Div.) 191 N. Y. Supp. 12.

Equity will usually not grant specific performance of contracts for valuation or arbitration, even though the legal remedy is inadequate. Fry, *Specific Performance* (4th ed. 1903) sec. 356; 5 Pomeroy, *Equity Jurisprudence* (4th ed.

1919) sec. 2180. It will not compel the discretionary act of choosing an arbitrator or valuer, since the appointee may refuse to act. Hayes, *Specific Performance of Contracts for Arbitration or Valuation* (1916) 1 CORN. L. QUART. 225. In addition, the defendant acting because of compulsion would not be likely to appoint a fair arbitrator or appraiser. Neither will the court appoint one and enforce his decision, nor itself appraise, as either would be enforcing a contract not made by the parties. *Southern Lumber Corporation v. Doyle* (1912, E. D. S. C.) 204 Fed. 829. But exceptions to this rule are recognized. See 8 Ann. Cas. 664, note; L. R. A. 1917 C, 813, note. Where the clause as to arbitration or valuation relates to some subsidiary or incidental term, specific performance will be granted. Thus equity decreed specific performance of a contract to sell an estate for £24,000, although containing a stipulation that furniture (valued at about £2,000) should be appraised by valuers mutually agreed upon. *Richardson v. Smith* (1870) L. R. 5 Ch. App. 648. The court itself has likewise appraised the value of property under an agreement to buy or sell, on the ground that the valuation was a subsidiary part of the contract. *Castle Creek Water Co. v. City of Aspen* (1906, C. C. A. 8th) 146 Fed. 8; *Town of Bristol v. Bristol & Warren Water Works* (1896) 19 R. I. 413, 34 Atl. 359. For the same reason it has appraised the rent to be paid under a renewal lease. *Grosvenor v. Flint* (1897) 20 R. I. 21, 37 Atl. 304; see *Williams v. Cow Gulch Oil Co.* (1921, C. C. A. 8th) 270 Fed. 9. It is submitted, however, that in the last two instances valuation was a most important element in the contract, and that the purchase price or sum to be paid was not a mere subsidiary part. The court, by appraisal, made a new contract for the parties. But such practice may be preferable to abandoning the plaintiff to whatever damages a jury might assess. In cases where the lessor, contrary to his agreement, refused to appoint a valuer of improvements made by the lessee, it has been held grossly inequitable to allow the lessor to appropriate the improvements without payment. *Hug v. Van Burkleo* (1874) 58 Mo. 202; see *Castle Creek Water Co. v. City of Aspen*, *supra*. The alternate provision in the instant case, that X act as umpire, if no other could be agreed upon, and X's willingness to act, appear at first glance to make this a simple case for equity jurisdiction. But as B refused to participate, X could not "umpire," and the actual contract of the parties could not be enforced, due, however, to B's wrongful act. The decree of the court in granting relief to A is sound, and in accord with an increasing number of cases. The application of the New York arbitration law does not enter into the decision of this case. Laws, 1920, ch. 275. As to its effect, see Cohen, *Commercial Arbitration and the New York Statute* (1921) 31 YALE LAW JOURNAL, 147.

**TAXATION—INHERITANCE TAX—TRANSFER INTENDED TO TAKE EFFECT AT DONOR'S DEATH.**—The decedent during his life-time created certain trust estates of which the income was to be paid, beginning at the date of creation of the trusts, to certain named beneficiaries for their lives, the corpus to be variously distributed thereafter. The decedent retained a power of revocation of the trusts. The tax commissioners sought to tax the trust deeds under the transfer tax law on the ground that there had been a transfer of property intended to take effect in possession or enjoyment at the death of the donor. N. Y. Cons. Laws, 1909, ch. 60, sec. 220 (4). Held, that the trust deeds were not liable to such taxation. *In re Cochran's Estate* (1921, Surro.) 190 N. Y. Supp. 895.

When a donor alienates the corpus of an estate and reserves the income thereof to himself during his life, giving a life estate in the income to some other person thereafter, the transfer is held to take effect in possession or enjoyment at the death of the donor. *People v. Shaffer* (1920) 291 Ill. 142, 125 N. E. 887; cf. *Nickel v. State* (1919) 43 Nev. 12, 185 Pac. 565; *In re Bottomley's Estate* (1920) 92 N. J. Eq. 202, 111 Atl. 605. But such a transfer, though not taking effect in